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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 ROBERT MARTIN,) NO. EDCV 10-00885 MMM (SS)
12)
12 Petitioner,) ORDER ADOPTING FINDINGS,
13)
13 v.) CONCLUSIONS AND RECOMMENDATIONS
14)
14 GEORGE A. NEOTTI, Warden,) OF UNITED STATES MAGISTRATE JUDGE
15)
15 Respondent.)
16)
_____)

17 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition,
18 all of the records herein, the Magistrate Judge's Report and
19 Recommendation (the "R&R"), Petitioner's Objections filed on August 6,
20 2010, and Petitioner's Objections filed on August 10, 2010.
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22 In his Objections, Petitioner argues that the AEDPA statute of
23 limitations does not bar his Petition because he raising an actual
24 innocence claim. (See August 6, 2010 Objections at 2-4; August 10, 2010
25 Objections at 2-3).¹ However, the Ninth Circuit has recently held that
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28 ¹ The Court refers to the pages of the August 6, 2010 Objections
as if they were consecutively paginated.

1 there is no actual innocence exception to the AEDPA limitations period.
2 See Lee v. Lampert, 610 F.3d 1125, 1133 (9th Cir. 2010) ("[W]e conclude
3 that there is no Schlup actual innocence exception to override AEDPA's
4 statute of limitations."). To the extent Petitioner argues that his
5 actual innocence claim provides an exception to the AEDPA's bar against
6 successive petitions, this argument also fails. As set forth in the
7 R&R, "even if Petitioner could satisfy one of the statutory exceptions,
8 he would still need to obtain permission from the Ninth Circuit Court
9 of Appeals before filing his Petition in this Court." (R&R at 10 n. 6);
10 see also 28 U.S.C. § 2244(b)(3)(A) ("Before a second or successive
11 application permitted by this section is filed in the district court,
12 the applicant shall move in the appropriate court of appeals for an
13 order authorizing the district court to consider the application.");
14 Woods v. Carey, 525 F.3d 886, 888 (9th Cir. 2008) ("Even if a petitioner
15 can demonstrate that he qualifies for one of these exceptions, he must
16 seek authorization from the court of appeals before filing his new
17 petition with the district court."). Accordingly, Petitioner's actual
18 innocence claim does not prevent dismissal of his Petition. The Court
19 rejects this Objection.

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21 The Court has made a de novo determination of the portions of the
22 Report and Recommendation to which the remaining Objections were
23 directed. The Court disagrees with the Objections and adopts the
24 findings and conclusions of the Magistrate Judge.

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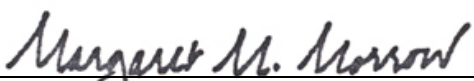
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3 IT IS THEREFORE ORDERED THAT:
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5 1. The Petition is DENIED and Judgment shall be entered dismissing
6 this action with prejudice.
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8 2. The Clerk shall serve copies of this Order and the Judgment
9 herein by United States mail on Petitioner at his current address of
10 record.
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12 Dated: October 14, 2010.
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16 MARGARET M. MORROW
17 UNITED STATES DISTRICT JUDGE
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